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**ATTORNEY FOR PLAINTIFF**  
**UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

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**UNITED STATES OF AMERICA,**

**Plaintiff,  
vs.**

**JAYCOB TYLER KUTZERA,**

**Defendant.**

**CR 17-48-GF-BMM**

**UNITED STATES'  
PROPOSED  
SUPPLEMENTAL JURY  
INSTRUCTION- WORKING  
COPY**

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Plaintiff United States of America, by and through its counsel of record, Cyndee L. Peterson, Assistant U.S. Attorney for the District of Montana, hereby submits the United States' Proposed Supplemental Jury Instruction number 41. Following the February 28, 2018, hearing

in this matter, the United States submits a supplemental jury instruction regarding consent.

Respectfully submitted this 1st day of March, 2018.

KURT G. ALME  
United States Attorney

/s/ Cyndee L. Peterson  
Assistant United States Attorney  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on 3/1/18, a copy of the foregoing document was served on the following persons by the following means:

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1. Evangelo Arvanetes- Attorney for defendant Kutzera

/s/ Cyndee L. Peterson  
CYNDEE L. PETERSON  
Assistant U. S. Attorney

Instruction No. \_\_\_\_

A minor cannot legally consent to being sexually exploited. As such, consent by Jane Doe is not a defense to the charges in the indictment against the defendant.

*United States v. Dhingra*, 371 F.3d 557, 567 (9th Cir. 2004)(the victim's willingness to engage in sexual activity is irrelevant, in much the same way that a minor's consent to sexual activity does not mitigate the offense of statutory rape or child molestation); *United States v. Elbert*, 561 F.3d 771, 777 (8th Cir. 2009); *United States v. Raplinger*, 555 F.3d 687, 691-2 (8th Cir. 2009); *United States v. Rashkovski*, 301 F.3d 1133, 1137 (9th Cir. 2002).

UNITED STATES' PROPOSED INSTRUCTION NO. 41